O. Requisitioned land (C.P.)

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File No. 52

Legal Dept

A **BRANCH**

Subject:—

Opinions under the Requisitioned Land (Continuance of Powers) Act, 1947

File No. O. Requisitioned land (C.P.) / 51

Gen. 194 e.

147-A

C O N T E N T S.

Legal Department File No. 0. Requisitioned Land (C. of P.)/51.

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Defence of India Rules, 1939. Rule 75A

Requisitioned Land (Continuance of Powers) Act, 1947 Sec. 5(1).

The view taken by the Collector of Nasik is correct. Under Rule 75A of the Defence of India Rules, the Central Government or the Provincial Government could requisition any property, moveable or immoveable. In the present case the lands were requisitioned by the Collector of Nasik for military purposes. Apparently therefore, the lands must have been requisitioned under the authority of the Central Government by the Collector of Nasik. The Collector's Order No.LND 502 dated 13th January 1943, whereunder the lands were requisitioned, has not been forwarded to Legal Department. If the aforesaid presumption that the lands must have been requisitioned by the Collector under the authority of the Central Government is correct, then the appropriate Government by or under whose authority the lands were requisitioned was the Central Government within the meaning of section 5(1) of the Requisitioned Land (Continuance of Powers) Act, 1947, and it is the Central Government alone who can acquire the requisitioned land (see the opinion of the Additional Secretary No.8250 dated the 16th June 1950, copy attached.)

Id/- .....

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Remembrancer of Legal Affairs.

U.R. to R.M.D. No. 503 dated the 9th January 1951.

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Legal Department.

It is presumed that the Merchantile Chambers have been continued under requisition under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947 and therefore can be continued under requisition under sub-section (1) of section 7 of the Bombay Land Requisition Act, 1948 which is as follows :-

"Notwithstanding anything contained in the Requisitioned Land (Continuance of Powers) Act, 1947, the State Government may, by order in writing, direct that any land which was continued under requisition under the said Act, shall continue to be subject to requisition under this Act for any purpose of the State or any other public purpose when it is released from requisition under the said Act or cease to be subject to requisition for any reason; and the State Government may for any such purpose use or deal with the land so continued to be subject to requisition."

It is not an essential pre-requisite of an order under this sub-section that the premises should first be released from requisition or cease to be subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947. As the life of the Requisitioned Land (Continuance of Powers) Act, 1947 has been extended upto 31st March, 1953 by section 2 of Bombay Act I of 1951, there is actually no necessity for the Government of India to derequisition the building, but since it insists on doing so, the Merchantile Chambers can be continued under requisition under section 7(1) of the Bombay Land Requisition Act, 1948 provided it is needed for a public purpose or State purpose. After this is done the Government of India may be asked to derequisition the Building.

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U.R. to R.D. (Accommodation) No.5291, Id/- dated the 2nd April, 1951.

Additional Secretary to Government

Legal Department.

Since the entire land was requisitioned presumably as one unit under one order in the present case it would not now be possible to split it up into different portions. If the benefit of the hanger constructed on a portion of the land, is to be retained, the entire holding will have to be acquired as decided by the D.A.D., L.H. & D. Service, Bombay Area (of R.L.A's opinions Nos. 5913 and 6387 dated 24/6/48 and 8/7/48 respectively).

Id/- .....

Additional Secretary to Government

U.R. to R.D. No. 6974, dated the 2nd May 1951

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L.D.R.I. No. 8181 dt. 24/4/51

Submitted.

It appears from these papers that certain lands in Kirol and Asalpi villages in Greater Bombay belonging to one Mr. M.A. Mehta and others were requisitioned by the Collector of Bombay under Order No. W.A.R. 162 dt. 15th September 1943 as amended by W.A.R. 162 dt. 10/4/44 issued under Rule 75 A (1) of the Defence of India Rules, 1939 for Military purposes and possession thereof was taken by the Military Estates Officer, Bombay Circle. The said lands were continued under requisition under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947. An agreement in respect of compensation was entered into between the owner and the Collector of Bombay on 15/3/44, whereby Government agreed to pay Rs. 1600/- per annum as compensation for the lands at Kirol. At about the same time the compensation for the lands at Asalpi was fixed at Rs. 75/- per year. On 23rd March 1949, the Collector of B.S.D. gave Notice of acquisition of the said lands. This notice was issued under section 5 of the Requisitioned Land (Continuance of Powers) Act 1947 and was published in the Govt. Gazette Extraordinary on 24/3/49. In the said notice it was stated that as buildings and structures had during the period of

the requisitioning ....

the requisitioning been constructed on or in or over the said lands at the expense of the Central Govt. and the Central Govt. had decided that the value of or the right to use such building and structures should be preserved or secured for the purposes of the Central Govt; and that therefore in exercise of the powers conferred by section 5 of India Act 17 of 1947 read with Government of India War Dept. (Army Branch) notification dt. 22/9/46 notice was given that the Central Govt. had decided to acquire the lands mentioned in the notice which included Shri Mehta's lands. It was declared that on publication of the notice in the Official Gazette the lands shall vest absolutely in the Central Govt. free of all encumbrances and the period of requisition of such lands shall end. By letter dt. 5th May 1949 Shri. Metha requested the Collector, B.S.D. to delete his lands from the notice as there were no structures or buildings on the lands. To this the Collector replied that the lands of the plaintiff could not be deleted from the notice of acquisition as the lands form part of the North Kurla Camp and as such they could not be separated from the rest of the Camp, the entire area of which could be treated as one unit for the purpose of sub-section (3) of section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947.

M/s. Dophtary Ferreira & Divan, Sholicitors have given notice of sui on the 6th January 1951 on behalf of Sh Mehta, claiming that the notice of acqui tion is bad and inoperative in law and the owner is entitled to possession of t lands from 24/3/49. According to the Collector, B.S.D., as all the lands bon the North Kurla Camp were requisitione under Order No. W.A.R. 102 dt. 10/9/43 a number of structures have been constru ed thereon, it is not now possible to derequisition only some of the lands which no structures stand because all t lands form one unit..

In view of R.L.A's opinion No. 591 24/6/48, Revenue Department is of the opinion that the acquisition in this ca is regular under section 5(3) of the Requisitioned Land (Continuance of Powe Act, 1947.

R.L.A. has been requested to advis whether this view ~~is~~ is correct.

It will be seen from the above men of R.L.A's opinion that lands which ar the subject matter of one requisition c can be treated as one unit and if there are some improvements on the land part of their general use and develop within the definition of "works" they can be acquired together. It appears the Collector's letter dt. 17/8/49 tha a number of structures have been built

these lands for the purpose of an Army Camp. As such, the acquisition is quite lawful. It would not be possible to split up the entire Camp and acquire some lands requisitioned under order dt. 10/9/40 and derequisition the rest. (Cf. R.L.A's opinion No. 6974 dt. 2/5/51. The view taken by the R. D. is therefore correct.

Id/- .....

Additional Secretary to Government.

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Legal Department.

The view taken by the Revenue Department is correct. The suit, if filed, would be defensible.

Id/- .....

Additional Secretary to Government.

U.D. to R.D., No. 8118, dated the 23rd May 1951.

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Requisitioned Lands (Continuance of Powers) Act, 1947, Section 5.

A permanent tenant has interest in the land and since the requisition and subsequent acquisition of such land would include the interest of the permanent tenant therein, he will have to be paid compensation for the interference with and the ultimate deprivation of his interest in the land.

Id/- .....

22/5

Remembrancer of Legal Affairs.

U.R. to L. & H.D., No. 8113 dated the 23rd May 1951.

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OFFICE OF THE R.L.A.

Compensation for acquisition of Municipal lands at Gowri-Wadala.

Requisitioned Land (Continuance of Powers) Act, 1947, sec.6(2).

The lands have been acquired under the provisions of the Requisitioned Land (Continuance of Powers) Act, 1947. Sub-section (2) of section 6 of that Act enacts that in respect of any acquisition of requisitioned land under this Act, the amount of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of the notice under section 5 a piece of land equal in area to, and situated within a distance of three miles from, the acquired land, and suitable for the same use as that to which the acquired land was being put immediately before the date of its requisition, or a sum equivalent to twice the market value of the acquired land on the date of its requisition, whichever is less; and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder. The compensation is obviously to be paid to persons having interest in the lands. The persons with whom the municipality has entered into agreements for the lease of the lands are, besides the municipality, such persons having interest in the lands. That position is also conceded by the municipality. Therefore, these persons should also be called upon by the Collector to file their claim for compensation. Their claims will not cast any additional burden by way of compensation on Government. For what the Collector is required to do under section 6(2) is to assess one single amount as compensation for the property acquired. After he has done so, he will have to proceed to assess the value of the interest of each claimant in the compensation amount according to the nature of his interest in the acquired lands.

Id/- .....
23/7

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U.R. to R.D. No. 11721, dated the 24th July 1951.

Office of the R.L.A.

In this case certain lands which were requisitioned under the Defence of India Rules for military purpose by operation of section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947, continued to be under requisition. The Collector of Ahmednagar by an order dated 9th September 1950 which was as follows has released these lands from requisition under the Act of 1947 and continued them under requisition under section 7(1) of the Bombay Land Requisition Act, 1948:-

> "In exercise of the powers conferred by sub-section (1) of section 7 of the Bombay Land Requisition Act, 1948-(Bom.XXXIII of 1948), read with Government Notification in the Health and Local Government Department No. P.55/235-N, dated the 16th February 1948, the Collector of Ahmednagar hereby directs that the lands specified below which were continued under requisition under the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947) shall continue to be subject to requisition under the Bombay Land Requisition Act, 1948 (Bom.XXXIII of 1948 with effect from the date of this order, the date on which the lands are released from requisition under the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947).

might perhaps have been more appropriate for the Collector to make a separate order for the release of the lands from requisition under the Act of 1947 and simultaneously to pass another order under section 7(1) of the Bombay Land Requisition Act, 1948 for the requisition of the lands. But that will not affect the validity of theorder made by the Collector which clearly recites that the lands were released from requisition under the Bombay Land Requisition Act, 1948. Had the lands not been released from requisition under the Requisitioned Land (Continuance of Powers) Act, 1947, it would have been possible for Government to acquire these lands under section 5 of that Act. But as the lands have been already

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derequisitioned under the Requisitioned Lands (Continuance of Powers) Act, 1947, by the Collector's order dated 9th September 1950, power for the acquisition of the lands under section 5 of that Act cannot be exercised. If the Bombay Government now want to acquire these lands, they will have to have recourse to the provisions of the Land Acquisition Act, 1894. The view expressed by Home Department in paragraph 4 of its note at page 189 is not correct.

Id/- .....

9/9

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H.R. to H.D., No.12333, dated the 9th August 1951.

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the land on which the Regent Cinema has been constructed in the Kalyan Regugee Camp is of the ownership of Government or the Radio & Electrical Industries. The land in question seems to have been originally requisitioned by the Collector of Thana in 1943-44 in exercise of the power conferred by sub-rule (1) of rule 75A of the Defence of India Rules for the purpose of the Defence Department. The Military Department on their part allotted the site for the erection of a cinema. The land in question has since been included in a notice issued by the Collector of Thana on 22-3-1949 under sub-section (1) of section 5 of the Requisitioned Lands (Continuance of Powers) Act, 1947. On 31-3-1949 a sale deed was executed between the Receiver appointed by the Court of the Civil Judge, Junior Division, Kalyan, in C.S. No. 195 and the Radio and Electrical Industries Ltd. by which on payment of a sum of Rs. 20,000/- the latter purchased the land from the Receiver.

2. The contention raised by the Radio and Electrical Industries in their letter dated 20-1-1950 is that the cinema was constructed by them at their ~~ownership~~ expense and that most of the land is of their ownership on the strength of the sale deed. It is true that sub-section (1) of section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, empowers the State Government to acquire requisitioned land continued to be subject to requisition under section 3 by publishing in the Official Gazette a notice to the effect that the Government has decided to acquire such land. But this power is subject to the provisions of sub-section (3) under clause (a) of which no requisitioned land can be acquired unless any works have

during the period of requisition been constructed, on in or over the land wholly or partly at the expense of Government and the Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government. The notice issued by the Collector of Thana on 22-3-1949 no doubt refers to both these factors, but the Company maintains that the cinema was constructed entirely at their cost. If this fact is correct, then it will mean that the acquisition of the lands would not be justifiable.

3. The Receiver was appointed to take possession of the moveable and immoveable property of the deceased S.G. Phadke. The sale deed dated 31-3-1949 refers to the lands in question in the possession of Government. It is not clear whether these lands were derequisitioned. Under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947, all requisitioned lands are continued subject to requisition until the expiry of the Act; and under the proviso power is given to Government to relieve such lands from requisition. Since the lands have been included in the Collector's notice dated 22-3-1949, they do not seem to have been relieved from requisition. In that case the sale by the Receiver would appear to be unauthorized since the lands have been continued in requisition.

4. The ~~Resett~~ position of facts appears to be confusing and Rehabilitation Department is in the first instance requested to ascertain on both the points raised in paragraphs 2 and 3 above, viz.

(1) Whether the Cinema was constructed entirely at the cost of the Company or part of the expense was borne by Government; and

(2) whether the lands had been relieved from requisition under section 3 of the Requisitioned Land (Continuance

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of Powers) Act, 1947; and if not how it was disposed by the Court Receiver.

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Remembrancer of Legal Affairs.

R.R. to R.H.D. No. 14036, dated the 6th October, 1950.

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17999 of 29-8-51.

Submitted,

The question raised for the consideration of the E.L.A. in this case is whether the land on which the Regent Cinema has been constructed in the Kalyan Refugee Camp is of the ownership of Government or the Radio and Electrical Industries. It appears that S.Nos. 132, 133, 136and 138 of the village of Shahad on which the Cinema now stands along with several other pieces of lands, had been requisitioned by the Collector of Thana in 1943-44 in exercise of the power conferred by sub-rule (1) of rule 75A of the Defence of India Rules for the purposes of the Defence Department. The Military Department on their part allotted the site for the erection of a Cinema-house. The lands in question had been included in a notice issued by the Collector of Thana on 22-3-1949 under sub-section (1) of section 3 of the Requisitioned Lands (Continuance of Powers) Act, 1947. On 31st March 1949, a sale-deed was executed between the Receiver appointed by the Court of the Civil Judge, Junior Division, Kalyan, in Civil Suit No. 195 and the Radio and Electrical Industries Ltd., whereby on payment of a sum of Rs. 20,000/- the latter purchased the land from the Receiver. Enquiries made of the Collector of Thana and the Military Authorities have revealed that the Cinema house in question has been constructed at the entire cost of the Company and the lands in question have not been released from requisition under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947.

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In view of section 5(3) of the Requisitioned Land (Continuance of Powers) Act, 1947 it would not be legally feasible for Government to acquire under that Act the land over which the Regent Cinema has been constructed by the Company at its own cost even though the structures in the surrounding lands vest in Government. If Government wants to acquire the land, it will have to be done with structures thereon under the Land Acquisition Act after relensing it from requisition.

Id/- .....

Additional Secretary to Government.

, No. 14857, dated the 18th September 1951.

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Legal Department.

R.J. No.17185
15/6/1951.

Submitted.

It appears from the letter of the Collector of Nasik that the villages of Bodhegaon, Pimpalgaon, Kham and Nandur Vaidya in Nasik Taluka were requisitioned under Rule 75 A of the Defence of India Rules and continued under requisition under sec.3 of the R.L. (C. of P.) Act, 1947. They were acquired on 1/6/1950 under sec. 5 of the Requisitioned land (C. of P.) Act, 1947. The Collector wants to know whether compensation for the fruit trees standing on the land, should be given for the whole year. The Revenue Department is of the opinion that annual fruit compensation should be paid for the period from 1/4-1950 to 31/5-1950 i.e. upto the end of the requisition of the lands and whatever final compensation is payable on account of acquisition of the lands under sub-sec. (2) of sec. 6 of the R.L.(C. of P.) Act 1947 should include final and not annual compensation i.e. while assessing compensation the fruit trees in the acquired lands should be ~~taken~~ taken into consideration with a view to compensating the landlords for the loss of fruits from the date of acquisition of the lands. R.L.A. has been requested to confirm the above view.

Seen and returned
The view taken by R. D. is correct.

Id/- .....

U.R. to R.D. No-15990, dated the 8-10-1952.

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Office of the R.J.A.

Defence of India Rules, 1939 - Rule 75A (1), (2) and (3).

Requisitioned Land (Continuance of Powers) Act, 1947 Sec. 3 and 5.

As regards lands requisitioned under rule 75A (1) of the Defence of India Rules and continued under requisition under section 3 of the Requisitioned Lands (Continuance of Powers) Act, 1947, the appropriate Government can use or deal with any requisitioned land in such manner as may appear to it to be expedient (see Additional Secretary's opinion No.G-570, dated 28-11-51). The view taken by the R.J. in this respect is therefore correct.

2. As regards lands acquired under rule 75A (2) of Defence of India Rules it may be pointed out that under sub-rule (3) of the same rule -

> "Where a notice of acquisition is served on the owner of the property or published in the Official Gazette under sub-rule (2), then at the beginning of the day on which the notice is so served or served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar circumstances, and the period of the requisition thereof shall end."

In view of the above provision Government can deal with the lands acquired under rule 75(2) of the Defence of India Rules as it likes and if the lands are not required for the purpose for which they were acquired, Government may deal with them as it likes i.e. even lease them to persons other than the former owners.

3. Similary, the lands acquired under sub-section (1) of section 5 of the Requisitioned Land (Continuance of Powers) Act vest absolutely in the appropriate Government free from all encumbrances on and from the day on which

R.J.A.

the notice, (that such Government has decided to acquire such land), is published in the Official Gazette.

4. Thus the appropriate Government can use or deal with, as it likes, the lands acquired under Requisitioned Land (Continuance of Powers) Act, 1947. The owners of the acquired lands can have no cause for grievance on the ground that their lands have been let to other persons. The view taken by R. D. on this point is not correct.

sd/- J.R. Dharadhar.

R. L. A.

R. to R.D. No. 19390, dated the 3-12-1951.

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